tahankan harga yang dinilaikan. Bahkan, sepertimana yang saya katakan, pihak pakar penilai plaintif sendiri meragui cara mencapai harga pasaran yang dibuat 'di atas meja sahaja' itu yang mana telah dilakukan di sini.

Di dalam hal ini, kita lihat s 257 Kanun Tanah Negara 1965 itu tidak menyatakan apakah yang dikatakan 'anggaran nilaian pasaran' di dalam sesuatu keadaan. Ini agak menyulitkan lagi kerana diperhatikan seksyen itu agak sunyi atas makna nilaian pasaran itu sendiri yang perlu ditentukan terlebih dahulu sebelum anggarannya itu ditentukan. Tanpa definisi itu, maknanya di tempat lain seharusnya boleh diambil kira. Perkataan 'nilaian pasaran' itu sering dibangkitkan di dalam kes-kes pengambilan tanah di mana ia disebut sebagai harga yang diterima dengan suka hati (willing) oleh seseorang penjual dan pembeli di pasaran terbuka. Di dalam ertikata itu tidak semestinya harga yang didapati termahal sekali di sekitar tanah yang terbabit itu menggambarkan harga pasaran di tempat itu, atas sebab-sebab yang tidak perlu dibentangkan di sini, sungguhpun bagi menentukan anggaran harganya sahaja harga itulah yang terselamat sekali diambil kira kerana biasanya itulah harga yang tepat sekali. Kalau harga itu tidak betul, pihak umum yang ingin membelinya boleh menilai dan menguji harga itu sendiri dan menolaknya apabila pelelongan itu diadakan nanti. Ini bermakna bagi menentukan anggaran harganya itu sahaja perlulah diambil kira satu harga sahaja, sekurang-kurangnya, asalkan ia yang tinggi sekali, di sekitar tanah yang terbabit. Harus juga ditegaskan di sini bahawa bagi menentukan harga anggaran itu, perlulah penolong kanan pendaftar mengambil kira, bukan sahaja pendapat pihak yang mendapat perintah mahkamah supaya tanah itu dilelong atau dijual, tetapi juga pihak tuan tanah yang terbabit. Oleh itu, saya memutuskan bahawa permohonan ini dibenarkan dengan bayaran kos.

Permohonan dibenarkan.

Solicitors: *KC Yap, Kamaludin & Partners; Christina Chia & Partners; Adnan Sundra & Low.*

Dilapurkan oleh *Zarinah Marican*

Leong Ying Ming v Public Prosecutor

HIGH COURT (KUANTAN) — CRIMINAL APPLICATION NO 44-1-90
LAMIN J
2 APRIL 1990

Criminal Procedure — Bail — Whether offence under s 39A(2) of Dangerous Drugs Act 1952 is bailable — Dangerous Drugs Act 1952, ss 39A & 41B

The accused was charged with an offence under s 39A(2) of the Dangerous Drugs Act 1952. Bail was denied by the sessions court on the ground that the offence was unbailable. No certificate was presented by the public prosecutor to the effect that it was not in the public interest to grant the accused bail. The accused applied to the High Court.

Held, allowing the accused's application:

(1) An offence under s 39A carried a minimum penalty of five years' imprisonment and therefore did not come under s 41B(1)(b) of the Dangerous Drugs Act 1952 which contemplated an offence which carried a penalty of more than five years' imprisonment.

(2) The accused was therefore granted bail of $10,000 in two sureties.

[*Editorial Note*: The Public Prosecutor has appealed to the Supreme Court vide Civil Appeal No 05-89-90.]

Cases referred to

1 *Yap Sooi Kim* v *PP* [1989] 1 MLJ 44 (not folld)

Legislation referred to

Dangerous Drugs Act 1952 ss 39A, 41B

Tan Hock Chuan for the accused.

Allaudeen bin Ismail (Deputy Public Prosecutor) for the Public Prosecutor.

Cur Adv Vult

Lamin J: This is an application for bail by a person charged with the offence under s 39A(2) of the Dangerous Drugs Act 1952 (Act 234) and the charge reads:

> Bahawa kamu pada 14 September 1989 jam lebih kurang pukul 10.30 malam, di dalam sebuah bilik di kedai no 86 Jalan Ah Peng, Bentong, dalam Daerah Bentong, dalam Negeri Pahang Darulmakmur, seorang yang tidak diberi kuasa di bawah seksyen 4 dan 5 atau mana-mana juga undang-undang yang dibuat di bawah seksyen 7 Akta Dadah Berbahaya telah didapati dalam kawalan kamu 106 kartus ganja seberat 50.84g, oleh itu kamu telah melakukan satu kesalahan di bawah seksyen 6 dan boleh dihukum di bawah seksyen 39A(2)(f) Akta Dadah Berbahaya No 30/52 (semakan 1980) Akta 234.

Bail was applied for before the sessions court judge at Bentong but was refused on the ground that it was an unbailable offence under the Dangerous Drugs Act 1952. A person found guilty for an offence under s 39A(2) of the Dangerous Drugs Act 1952 'shall ... be punished with imprisonment for life or for a term which shall not be less than five years, and shall also be punished with whipping of not less than ten strokes'. Learned counsel for the

applicant submitted that the offence under s 39A(2) falls under s 41B(1)(c) and not s 41B(1)(b) of the Act and therefore it is bailable unless the public prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person. There is no such certificate in respect of the present case. The learned deputy public prosecutor opposed the application on the authority of *Yap Sooi Kim* v *PP*.[1]

The original charge that was preferred against the applicant before the Bentong magistrate's court on 15 September 1989 pending the issuance of the chemist report was for an offence under s 39A(1) of the Act and he was granted bail of $5,000 in two sureties. Subsequently, on 12 February 1990, the said charge was amended to one under s 39A(2) in the form as produced above. The penalty for the offence under sub-s (1) of s 39A is:

> .. shall, instead of being liable to the punishment provided for that offence under the section under which the person has been so found guilty, be punished with imprisonment for a term which shall not be less than two years but shall not exceed five years, and he shall also be punished with whipping of not less than three strokes but not more than nine strokes.

and the applicant was allowed bail as it falls under s 41B(1)(c); hence the bail of $5,000. Section 41B reads:

> (1) Bail shall not be granted to an accused person charged with an offence under this Act
>
> (a) where the offence is punishable with death; or
> (b) where the offence is punishable with imprisonment for more than five years; or
> (c) where the offence is punishable with imprisonment for five years or less and the Public Prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person.
>
> (2) The provisions of subsection (1) shall have effect notwithstanding any other written law or any rule of law to the contrary.

The penalty for the offence under s 39A(2) is:

> ...shall, instead of being liable to the punishment provided for that offence under the section under which the person has been so found guilty, be punished with imprisonment for life or for a term which shall not be less than five years, and he shall also be punished with whipping of not less than ten strokes.

The minimum imprisonment term under s 39A(2) is five years. But the category of offence that falls under s 41B(1)(b) for which no bail will be granted is one that is 'punishable with imprisonment for more than five years'. Section 39A(2) is an offence carrying the minimum penalty of five years with life imprisonment as the maximum. Under s 41B(1)(b) the minimum penalty that the court is empowered to impose is not five years but it is 'more than five years'. The learned Mr Justice Anuar in the case of *Yap Sooi Kim* v *PP*[1] explains (at p 45):

> With respect, I think the learned counsel has misread the provision of s 41B(1)(b) of the Act when he contended that this restriction on bail does not apply if the accused is sentenced to five years' imprisonment. The operative words under this section are 'punishable with imprisonment'. This phrase means the power of punishment which the court has under the law and not the punishment which the court may choose to impose. As an accused charged with an offence under s 39A(2) of the Act is liable to an imprisonment term for life (five years being the minimum), it is clear that that is an offence within the ambit of s 41B(1)(b) of the Act.

With respect it is agreed that the power under s 41B(1)(b) is the power of punishment which the court has. So also in the case of the other two paras (a) and (c) of sub-s (1). For an offence under s 39A(2), the court has the power to punish for any term from five years up to life. As for sub-s (1)(a) of s 41B, it concerns the type of offences for which the court has the power to impose the sentence of death and for the type of offences under sub-s (1)(c), the court has the power to impose the sentence of imprisonment '*for five years or less*' or in other words '*not exceeding five years*'. But under sub-s (1)(b) it is worded as '*more than five years*'. It is *not* '*five years and more*'. It is anything beyond five years, whilst under s 39A(2) the minimum term of imprisonment which the court has the power to impose is '*not less than five years*'. In other words, it is '*five years and more*'. It does appear that strictly an offence under s 39A(2) cannot be of the type as stipulated under s 41B(1)(b). Perhaps it would have been clearer if s 41B(1)(b) had been worded thus:

> Where the offence is punishable with imprisonment for not less than five years.

In the circumstances, I therefore allowed bail of $10,000 in two sureties.

Application allowed.

Solicitors: *Kam Woon Wah & Co.*

Reported by *Mathavan Devadas*